Supreme Court, U. S.
FILED
JUN 10 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1424

DAVID EMERY SERFASS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX

PETITION FOR CERTIORARI FILED MARCH 22, 1974
CERTIORARI GRANTED APRIL 22, 1974

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Lower Court Opinion

APPENDIX B

JUDGMENT of
UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

APPENDIX C

OPINION of
UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

These portions of petitioner appendix are set forth in the petition for a writ of certiorari.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

Vio: 50 App. U.S.C. 462

UNITED STATES OF AMERICA

v.

DAVID EMERY SERFASS

MOTION TO DISMISS THE INDICTMENT

Harry A. Dower of counsel for the Defendant, moves that the Indictment be dismissed on the following grounds, which are supported by the attached Affidavit of the Defendant:

1. That David Emery Serfass is the Defendant in the above-cited case;

2. That the Defendant had been ordered for induction into the Armed Forces of the United States on December 18, 1970, such induction to have taken place on January 18, 1971;

3. That the Defendant applied for Conscientious Objector Status, classification I-O, on December 29, 1970 to Local Board No. 89;

4. That Local Board No. 89 considered the entire file of the Defendant at a meeting on January 13, 1971 and unanimously agreed "that there was no change over which [the Defendant] had no control" and on this basis decided not to re-open Defendant's file;

5. That such notice, received by the Defendant by letter dated January 14, 1971 from Local Board No. 89, concluded that the Defendant was still under Order to report for induction on January 18, 1971;

6. That the recent cases of *United States of America v. Shomock*, 462 F. 2d 338 (June 20, 1972) and *United States of America v. Ziskowski*, 465 F. 2d 480 (August 14, 1972), both decided by the Third Circuit Court of Appeals, indicate that if the Local Board gives no reasons as to why the claimants file will not be re-opened other than the prefuntory "no change over which you had no control," it is inadequate under the holdings of *Scott v. Commanding Officer*, 431 F. 2d 1132 (1970) and *U.S. v. Neamand*, 452 F. 2d 25 (3d Cir. 1971), as it would be impossible to tell "whether the Board's refusal was based on lack of jurisdiction or some other technical reason or was a decision based on the merits of [the]. . . claim." *United States v. Shomack*, supra., at 346.

HARRY A. DOWER,
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AC 215-821-8700
Of Counsel for the Defendant

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 15229 Cr.

Vio: 50 App. U.S.C. 462

UNITED STATES OF AMERICA

v

DAVID EMERY SERFASS

SS.:

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LEHIGH

David Emery Serfass, the Defendant herein, being duly sworn according to law, deposes and states that the facts set forth below are true and correct to the best of his knowledge, information and belief.

1. That he is the Defendant in the above cited case;

2. That he applied for Conscientious Objector status, classification I-O, on December 29, 1970 to Local Board No. 89;

3. That, on December 18, 1970, he had been ordered for induction into the Armed Forces of the United States, such induction to have taken place on January 18, 1971;

4. That Local Board No. 89 considered the entire file of the Defendant at a meeting on January 13, 1971 and unanimously agreed "that there was no change over which (the Defendant) had no control" and on this basis decided not to re-open Defendant's file;

5. That such notice, being the only such communication, was received by the Defendant by letter dated January 14, 1971

from Local Board No. 89, concluding that the Defendant was still under Orders to report for induction on January 18, 1971. A true and correct copy of this letter is attached and marked Exhibit "A".

DAVID EMERY SERFASS

Sworn to and Subscribed before me this 29th day of December, 1972.

SARA L. KALB
Notary Public, Allentown, Lehigh County
My Commission Expires February 18, 1974